BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIRST STUDENT, INC.,

Petitioner,

and,

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 205,

Union,

and,

AMALGAMATED TRANSIT UNION, LOCAL 1729, AFL-CIO,

Union,

and,

AMALGAMATED TRANSIT UNION, LOCAL 1743, AFL-CIO,

Union,

Case Nos. 6-UC-154144

and

6-RM-154166

REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S DECISION

Comes now, Amalgamated Transit Union, Local 1729 (hereinafter "Local 1729") by and through its attorneys, Steven E. Winslow, Esquire and Jubelirer, Pass & Intrieri, P.C., and hereby files this Request for Review of the Regional Director's Decision pursuant to Section 102.67 of the Board's Rules and Regulations:

I. Introduction

This case arises from First Student, Inc. (hereinafter "First Student")'s violation of a collective bargaining agreement, bad-faith bargaining, and unlawful efforts to provide assistance

to its preferred Union—International Brotherhood of Teamsters, Local 205 (hereinafter "Local 205")—in order to rid its facilities of Local 1729. If the Regional Director's decision is allowed to stand, this will only serve to undermine employee free choice and reward First Student for engaging in improper conduct contrary to the aims and purpose of the NLRA. In essence, by allowing the Regional Director's decision to stand, the Board would be condoning an employer's efforts to rid its facilities of Local 1729, an incumbent union which was freely chosen by its employees, and replace it with Local 205, the union preferred and endorsed by management.

First Student's improper conduct is the sole reason that the current state of affairs exists at the Old Frankstown Terminal. In the absence of First Student's contract violation, bad-faith bargaining, and unlawful assistance to Local 205, there would be absolutely no question as to the majority status of Local 1729 at the facility. Aside from the circumstances arising directly from the improper actions of management, there is no justification whatsoever for the Board to make any determination other than a conclusion that Local 1729 should continue to represent the drivers, monitors, and dispatchers at the Old Frankstown facility.

Accordingly, the Board should grant Local 1729's Request for Review, reverse the decision of the Regional Director, and find that Local 1729 continues to be the exclusive collective bargaining representative for all drivers, monitors, and dispatchers at the Old Frankstown Road facility. Local 1729 has already obtained an arbitration award ordering First Student to reinstate its members for purposes of servicing the new school bus routes obtained from the Woodland Hills School District. As such, the Board should defer to the arbitrator's award because Local 1729 will unquestionably represent a majority of the drivers, monitors, and dispatchers at the Old Frankstown Road facility once the award is enforced through the pending federal court action.

II. Summary of the Facts

First Student has operated and continues to operate a terminal that is located at 101 Old Frankstown Road, Plum Borough, PA (hereinafter the "Old Frankstown Terminal"). (Hearing Tr., at p. 25:6-8). The Amalgamated Transit Union has, through its various local unions, been the NLRB certified exclusive collective bargaining representative of all drivers, monitors, dispatchers, and mechanics at the Old Frankstown Terminal since May 2, 1996. (ATU Ex. 2). Beginning in 1997, Local 1729 began representing all of the drivers, monitors, dispatchers, and mechanics employed at the facility. (Hearing Tr., at p. 149:7-10). However, in 2005, Amalgamated Transit Union, Local 1743 (hereinafter "Local 1743") began representing the mechanics at the facility separate and apart from the drivers, monitors, and dispatchers. (Hearing Tr. p. 170:5-9). At the end of the 2012-2013 school year, Local 1729 represented all drivers, monitors, and dispatchers at the facility and Local 1743 represented all mechanics at the facility. (Hearing Tr. at p. 33:7-17).

Until the end of the 2012-2013 school year, First Student operated a terminal that was located at 97 Harriott Road, Rankin, PA (hereinafter the "Rankin Terminal"). (Hearing Tr., at p. 27:3-12). All of the drivers, monitors, and mechanics employed at the Rankin Terminal were represented by Local 205. (Hearing Tr., at p. 31:18-25). Upon the conclusion of the 2012-2013 school year, First Student closed the Rankin Terminal and moved the former Rankin employees to the Old Frankstown Terminal. (Hearing Tr., at p. 27:3-12). The parties agreed to a very limited, narrow exception to the recognition clauses of Locals 1729 and 1743 in which the members of Local 205 were permitted to "follow their work"—i.e., they were permitted to continue performing only those specific routes that were previously serviced out of the Rankin Terminal. (Hearing Tr., at p. 139:16-140:4).

During the 2013-2014 school year, the Old Frankstown drivers, monitors, and dispatchers represented by Local 1729 and the former Rankin drivers and monitors represented by Local 205 operated as two completely separate terminals despite being physically located in the same facility. (Hearing Tr., at p. 151:10-24). These respective groups of employees were managed entirely separately and had separate union boards, separate seniority lists, separate managers, separate charter runs, separate middays, and separately assigned routes. (Hearing Tr., at p. 151:10-24). Although management of the Local 205 and Local 1729 employees was consolidated near the end of the 2013-2014 school year, this was not an effort by First Student to combine the groupings of employees and was instead the result of administrative staffing changes. (Hearing Tr., at p. 152:23-154:13).

At the end of April 2014, First Student issued a WARN Notice of a mass layoff to members of Local 1729 because it lost the contract for the Penn Hills routes, which members of Local 1729 were servicing. (Hearing Tr., at p. 154:14-155:8). On June 6, 2014, First Student provided unlawful assistance to its preferred union—Local 205—by sending a letter to members of Local 1729 informing them that they were required to join Local 205 if they wanted to remain employed at the Old Frankstown Terminal and offering $150 to cover the Local 205 initiation fee. (Joint Ex. 1F; Hearing Tr., at p. 155:14-156:22). First Student also violated the recognition clause (Article I) and the provisions allowing Local 205 to "follow their work" (Appendix A, Section 8) in the Local 1729 collective bargaining agreement by incorrectly awarding the 59 new routes obtained from the Woodland Hills School District to members of Local 205 rather than properly awarding the work to members of Local 1729. (Joint Ex.1D, at p. 4, 28; Joint Ex. 1I, at p. 14-15). Moreover, First Student bargained in bad-faith with Local 1729 by negotiating an identical recognition clause with Local 205. (Joint Ex. 1D, at p. 4, 28; Joint Ex. 1G, at p. 1, 25;

Joint Ex. 1J). As a direct result of the contract violation, bad-faith bargaining, and unlawful assistance to Local 205, the vast majority of Local 1729's membership was laid-off and the only members who currently remain employed at the Old Frankstown Terminal are those individuals who were coerced into joining Local 205. (Employer Ex. 7; Hearing Tr., at p. 157:22-158:6).

On June 11, 2014, Local 1729 filed a grievance alleging that First Student violated Article 8, Section 2 of its collective bargaining agreement—i.e., the recognition clause—by awarding the 59 new Woodland Hills routes to members of Local 205 rather than members of Local 1729. (Joint Ex. 1H). On December 10, 2014, First Student, Local 1729, and witnesses from Local 205 participated in an arbitration hearing before Arbitrator Christopher Miles regarding the grievance pertaining to the new Woodland Hills routes. (Joint Ex. 1I). Arbitrator Miller reviewed testimony provided by witnesses from First Student, Local 1729, and Local 205, as well as the applicable collective bargaining agreements for Local 1729 and Local 205. (Joint Ex. 1I, at p. 12-15).

Arbitrator Miles concluded that First Student committed a contract violation by improperly awarding the 59 new Woodland Hills routes to Local 205 rather than properly awarding the new routes to Local 1729. (Joint Ex. 1I, at p. 12-15). As such, Arbitrator Miller ordered that the improperly laid-off members of Local 1729 be recalled in seniority order and made-whole. (Joint Ex. 1I, at p. 15). Importantly, Arbitrator Miller did not decide which union should be the exclusive collective bargaining representative for the drivers, monitors, and dispatchers at the Old Frankstown Road facility. (Joint Ex. 1I). Rather, he simply interpreted the collective bargaining agreement, concluded that it was violated, and ordered the reinstatement of the members of Local 1729. (Joint Ex. 1I). As such, Arbitrator Miller's award did not decide a question concerning representation. (Joint Ex. 1I). Local 1729 is currently the Plaintiff in an

action pending in the United States District Court for the Western District of Pennsylvania, docketed as Case No. 2:15-cv-00806-TFM, seeking to enforce the arbitration award issued by Arbitrator Miles. (ATU Ex. 4).

On June 9, 2015, Local 1729 filed an unfair labor practice charge, docketed as Case No. 06-CA-153803, alleging that First Student bargained in bad-faith in violation of Sections 8(a)(1), (2), and (5) of the NLRA by negotiating identical recognition clauses with Local 1729 and Local 205. (Joint Ex. 1J). This bad-faith bargaining occurred in the broader context of First Student requiring members of Local 1729 to join Local 205 in order to remain employed at the Old Frankstown Terminal. (Joint Ex. 1J). Although the charge was perfunctorily dismissed by the Region only days before the Regional Director issued the decision in this case, Local 1729 has appealed the dismissal of the unfair labor practice charge and it is currently pending on appeal before the Board.

III. Argument

A. A SUBSTANTIAL QUESTION OF LAW AND POLICY IS RAISED BECAUSE OF THE ABSENCE OF, AND DEPARTURE FROM, OFFICIALLY REPORTED BOARD PRECEDENT.

1. The Regional Director's Decision Should Be Reviewed By The Board Because Of The Absence Of Officially Reported Precedent Establishing That An Employer Cannot Use A Representation Proceeding In Order to Benefit From Its Own Improper Conduct.

This case raises a substantial question of law and policy because of the absence of officially reported board precedent applicable to the circumstances of this case. As the Regional Director recognized in her decision, this case presents a "unique situation" with "unusual circumstances." (Regional Director's Decision, at p. 40). Local 1729 is not aware of any officially reported board precedent specifically standing for the proposition that an employer

cannot drive an incumbent union from its facility by violating a collective bargaining agreement, engaging in bad-faith bargaining, and providing unlawful assistance to a preferred union and subsequently obtain the blessing of the Board for its preferred union.[1] However, the NLRA was enacted by Congress with the specific intent of protecting the right of employees to join together as part of a union of their own choosing—not their employer's choosing—for the purpose of negotiating terms and conditions of employment with their employer. *See Murphy Oil USA, Inc.*, 361 N.L.R.B. 72 (2014).

The Regional Director's decision endorses First Student's improper actions by recognizing Local 205 as the exclusive collective bargaining representative for all drivers and monitors at the Old Frankstown facility even though the majority status of Local 205's members is solely and directly a result of First Student's improper conduct. In essence, the Regional Director has established dangerous precedent that seemingly allows employers to intentionally engage in contract violations and conduct offensive to the provisions of the NLRA in order to replace a disfavored, incumbent union that was freely-chosen by the employees with a union preferred by management through representation proceedings. Surely Congress did not intend for representation proceedings to be utilized by employers as an offensive weapon for purposes of undermining employee-free choice and workers' rights through manipulative and improper actions designed to ensure recognition of the employer's preferred union as the exclusive collective bargaining representative. As the absence of officially reported Board precedent raises substantial questions of law and policy, the Board should grant Local 1729's Request for Review of the Regional Director's decision in order to articulate new rules and policies designed to

[1] As noted by the Regional Director on page 9 of her decision, the ATU Locals did not cite to legal authority in support of the proposition that the Regional Director should not allow First Student to benefit from its improper conduct through the representation proceedings. Legal authority was not cited in support of this proposition specifically because the ATU Locals are not aware of any officially reported Board precedent that has addressed this issue.

prevent employers from using representation proceedings to benefit from their own improper conduct.

2. The Regional Director's Decision Should Be Reviewed By The Board Because Of The Departure From Officially Reported Board Precedent Regarding Deferral To Arbitration Awards.

A substantial question of law and policy is also raised because the Regional Director's decision departs from officially reported Board precedent regarding the deferral to arbitration awards. Federal labor policy under the NLRA strongly favors arbitration as a method of resolving contractual disputes between the parties to a collective bargaining agreement. *See United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960). As such, "[i]f by the time the dispute reaches the Board, arbitration has already taken place, the Board shows deference to the arbitral award, provided the procedure was a fair one and the results were not repugnant to the Act." *Carey v. Westinghouse Electric Corp.*, 375 U.S. 261, 270-71 (1964). "[E]ven though a [grievance] involves . . . a representation or jurisdictional dispute it is nevertheless not removed from the arbitral process. . . . Both the National Labor Relations Board and [the Supreme] Court have shown a high regard for the informed opinion of the arbitrator in such cases." *U.S. Bulk Carriers, Inc. v. Arguelles*, 400 U.S. 351, 376-77 (1971). As the First Circuit Court of Appeals has explained:

> For almost forty years it has been clear that arbitrators can resolve jurisdictional disputes involving an employer and two local unions, whether the dispute is "(1) a controversy as to whether certain work should be performed by workers in one bargaining unit or those in another; or (2) a controversy as to which union should represent the employees doing particular work." *Carey v. Westinghouse Elec. Corp*., 375 U.S. 261, 263, 11 L. Ed. 2d 320, 84 S. Ct. 401 (1964). *Carey* held that the employer must arbitrate a work assignment jurisdictional dispute on the demand of only one union. *Id.* at 265-66. Sometimes the second union seeks to intervene in the arbitration, sometimes not, and this case involves no issue of arbitral authority to compel the second union's

> participation. *See Elkouri & Elkouri: How Arbitration Works* 350-51 (M.M. Volz & E.P. Goggin eds., 5th ed. 1997). Thus, there was nothing wrong in principle with the arbitrators reviewing the agreement with one local although a different local had some interests at stake. Of necessity, *Carey* means arbitrators may have to review the intersections of different labor agreements in the course of applying one of them.

JCI Communications, Inc. v. IBEW, Local 103, 324 F.3d 42, 49 (1st Cir. 2003).

However, the Regional Director declined to defer to the award issued by Arbitrator Miles even though his decision was specifically limited to the determination of a contractual issue—whether First Student violated the recognition clause in its collective bargaining agreement with Local 1729 by assigning the new Woodland Hills routes to employees in Local 205's unit. Contrary to the Regional Director's decision, Arbitrator Miles did not determine a question concerning representation because he did not determine which union should be the appropriate representative for drivers, monitors, and dispatchers at First Student's Old Frankstown Road facility. Rather, he merely interpreted the contract, concluded that First Student violated its terms by assigning the new Woodland Hills routes to employees in Local 205's unit instead of employees in Local 1729's unit, and ordered the reinstatement of the laid-off members of Local 1729.

"However the dispute be considered—whether one involving work assignment or one concerning representation—[there is] no barrier to use of the arbitration procedure. If it is a work assignment dispute, arbitration conveniently fills a gap and avoids the necessity of a strike to bring the matter to the Board. If it is a representation matter, resort to arbitration may have a pervasive, curative effect even though one union is not a party." *Carey*, 375 U.S. at 272 (finding that deferral to an arbitration award in a jurisdictional dispute between two unions and an employer is appropriate regardless of whether the dispute is characterized a question concerning

work assignment or a question concerning representation and even if only one union is a party to the arbitration proceeding).

Contrary to the Regional Director's contentions, *Commonwealth Gas Co.* actually supports the argument that the Board should defer to Arbitrator Miles' award. *See Commonwealth Gas Co.*, 218 N.L.R.B. 857 (1975). In *Commonwealth Gas Co.*, the Board refused to defer to an arbitration award when a union filed a UC Petition seeking to add four additional classifications of employees to the unit—a question that was purely within the Board's jurisdiction without any issue of contract interpretation. *See id.* However, in this particular case, Arbitrator Miles made a contractual interpretation of the recognition clause in Local 1729's collective bargaining agreement with First Student, concluded that its terms had been violated by awarding the new Woodland Hills routes to Local 205, and ordered reinstatement of Local 1729's laid-off members as a remedy. As such, deferral to the Arbitrator Miles' award in regards to this matter of contract interpretation is completely appropriate.

Furthermore, as was also explained in *Commonwealth Gas Co.*, the Board's "sole function in representation proceedings is to ascertain and certify the name of the bargaining representative, if any, that has been designated by the employees in the appropriate unit. It is not the Board's responsibility in representation proceedings to decide whether employees in the bargaining unit are entitled to do any particular work or whether an employer has properly reassigned work from employees in the bargaining unit to other employees." *Id.* Yet, in the current case, the Regional Director inappropriately ignored Arbitrator Miles' award and overstepped the Region's responsibilities in representation proceedings by determining that employees in Local 205's bargaining unit were entitled to perform the work for the new Woodland Hills routes.

The Regional Director's decision not to defer to Arbitrator Miles' award is similarly unsupported by *Hershey Foods Corp.*, 208 NLRB 452, 457 (1974). Although the Regional Director cites *Hershey Foods Corp.* to support its decision not to defer to arbitration, that case is completely inapplicable to the factual circumstances of the current case. *See id.* The Regional Director is correct that the Board explained in *Hershey Foods Corp.* that it "has declined to defer to arbitral awards where accretion is in issue." *Id.* However, the Regional Director specifically determined in this case that "the Board's accretion doctrine does not apply to the circumstances of this case." (Regional Director's Decision, at p. 35). As such, the citation to *Hershey Foods Corp.* provides no support whatsoever for the Regional Director's decision not to defer to Arbitrator Miles' award. As a substantial question of law and policy is raised by the departure from officially reported Board precedent, the Board should grant Local 1729's Request for Review of the Regional Director's decision in order to clarify the circumstances in which deferral to arbitration awards is appropriate and correct the departure from Board precedent.

B. THE REGIONAL DIRECTOR'S DECISION ON SUBSTANTIAL FACTUAL ISSUES IS CLEARLY ERRONEOUS AND SUCH ERROR PREJUDICIALLY AFFECTS THE RIGHTS OF LOCAL 1729.

The Regional Director's factual determination that work for First Student's facilities was historically assigned by school district is clearly erroneous given the evidence and testimony contained in the record. In the Regional Director's decision, a factual finding was made that "the parties' long-time practice was to divide and assign work based on the school district that each union's members handled prior to the facility merger." (Regional Director's Decision, at p. 36). However, neither the agreement allowing the members of Local 205 to "follow their work" nor the unions' respective recognition clauses make any reference to delineation of work by "school

district." (Hearing Tr., at p. 134-35). A very limited exception to Local 1729's exclusive jurisdiction over all routes performed out of the Old Frankstown Road facility was granted to allow the members of Local 205 to "follow their work"—i.e., only those specific routes that they performed at the Rankin terminal. (Hearing Tr., at p. 139-40). Other than those specific routes previously performed by members of Local 205 at the Rankin facility, any new routes were to be performed by members of Local 1729 regardless of the school district the routes came from. (Hearing Tr., at p. 146).

Absolutely no evidence and testimony presented during the hearing, other than the self-serving testimony of one of Local 205's officers, provides any support for the factual determination that work was historically assigned by school district. To the contrary, the testimony of Local 1729's witnesses and the written agreements between the parties all indicate that work was assigned by facility without regard to the particular school district involved. Furthermore, the Regional Director's factual determination that work was assigned to the respective unions by school district is completely contradicted by the factual determination that "[f]ive Teamsters Local 205 members continued to perform the work of the extra Penn Hills routes, as they had done before the merger." (Regional Director's Decision, at p. 18 n.9). Those five extra Penn Hills routes were operated out of the Rankin facility prior to the merger and thus they fell within the jurisdiction of Local 205 both before and after the members of Local 205 "followed their work" to the Old Frankstown Road facility. (Regional Director's Decision at p. 18 n.9; Hearing Tr., at p. 167:16-168:3).

Furthermore, the factual determination that there was a historic practice of assigning work by school district is clearly erroneous in light of the fact that the Regional Director was required to defer to the factual determinations in Arbitrator Miles' award by the doctrine of

collateral estoppel. "An arbitration decision can have res judicata or collateral estoppel effect . . . ." *Greenblatt v. Drexel Burnham Lambert, Inc.*, 763 F.2d 1352, 1360 (11th Cir. 1985). ''When an arbitration proceeding affords basic elements of adjudicatory procedure, such as an opportunity for presentation of evidence, the determination of issues in an arbitration proceeding should generally be treated as conclusive in subsequent proceedings, just as determinations of a court would be treated.'' *Id.* (citing RESTATEMENT (SECOND) JUDGMENTS § 84(3) and cmt. c (1982)). In such circumstances, "it is entirely appropriate to give collateral estoppel effect to all of the factual determinations which were necessary and critical to the arbitration panel's ultimate award." *Id.* at 1361. Collateral estoppel applies in Board proceedings if "(1) the identical issue was decided in a prior adjudication; (2) there was a final judgment on the merits; (3) the party against whom the bar is asserted was a party or in privity with a party to the prior adjudication; and (4) the party against whom the bar is asserted had a full and fair opportunity to litigate the issue in question." *Evans & Evans, Inc.*, 337 N.L.R.B. 1200, 1220 (2002).

First Student was collaterally estopped from relitigating the factual issue regarding the assignment of work because this issue—how work was historically assigned—was already litigated and decided in the arbitration proceeding. The outcome of the arbitration proceeding was a final and binding award on the merits. First Student—the Petitioner in this case—was a party to the arbitration proceeding. Furthermore, First Student had a full and fair opportunity to litigate this issue in the arbitration by presenting evidence and testimony and engaging in cross-examination. As such, the Regional Director made a clearly erroneous factual determination by failing to defer to the arbitration award's factual determination regarding the historical assignment of work because First Student was barred from relitigating this issue by the doctrine of collateral estoppel.

Arbitrator Miles made a factual determination that work has historically been assigned "based upon the geographic location of the Company's facility out of which the work is performed." (Joint Ex. 1I, at p. 14). Specifically, Arbitrator Miller determined that routes performed out of the Old Frankstown Road terminal were historically assigned to members of Local 1729 and routes performed out of the Rankin terminal were historically assigned to members of Local 205. (Joint Ex. 1I, at p. 14). Although these factual determinations were made in an arbitration proceeding, federal law is clear that the factual determinations in Arbitrator Miles' award should be treated just as conclusive as determinations made by a court. As such, the factual determination that work was historically assigned by school district is clearly erroneous because First Student was collaterally estopped from relitigating this issue. Local 1729 was prejudicially affected by the Regional Director's clearly erroneous factual determinations because it would otherwise continue to be the exclusive collective bargaining representative for all drivers, monitors, and dispatchers at the Old Frankstown Road facility.

C. The Regional Director's Ruling That The Pending Unfair Labor Practice Charge Did Not Block Processing Of The Employer's Petitions Resulted In Prejudicial Error.

The Regional Director committed prejudicial error by declining to postpone a decision on the employer's petitions pending the outcome of the charge currently pending on appeal before the Board. This charge alleges that First Student engaged in bad-faith bargaining by signing identical recognition clauses with Local 1729 and Local 205. (Joint Ex. 1J). As this charge alleges conduct that interferes with employee free choice and is inconsistent with First Student's petitions, the Regional Director should have used the Blocking Charge Doctrine to postpone

consideration of the petitions at issue in this case until the unfair labor practice charge was resolved on appeal.

The Board "has a general policy of holding in abeyance the processing of a petition where a concurrent unfair labor practice charge is filed by a party to the petition and the charge alleges conduct that, if proven, would interfere with employee free choice in an election, were one to be conducted." NLRB Casehandling Manual § 11730. "Importantly, the reason for the Board's blocking charge policy is that 'if, in fact, unfair labor practices have been committed, any election conducted before they have been remedied will not be a fair one'. . . . In other words, it is immaterial that elections may be delayed or prevented by blocking charges, because when charges have merit, elections should be prevented." *Levitz Furniture Co. of the Pacific, Inc. and United Food and Commercial Workers Union, Local 101*, 333 N.L.R.B. 717, 728 n.57 (2001).

"When the charging party in a pending unfair labor practice case is also a party to a petition, and the charge alleges conduct that, if proven, would interfere with employee free choice in an election, were one to be conducted, and no exception (Sec. 11731) is applicable, the charge should be investigated and either dismissed or remedied before the petition is processed." NLRB Casehandling Manual § 11730.2. The Board's exceptions to the Blocking Charge Doctrine are limited to circumstances in which: (1) the charging party requests to proceed nothwithstanding the pending charge, (2) the Regional Director is of the opinion that employee free choice is still possible despite the conduct alleged in the charge, (3) the charge is appropriate for deferral under *Collyer* or *Dubo*, (4) the charge and the petition raise significant common issues, (5) an R-Case hearing was scheduled before the charge was filed, and (6) an election was scheduled before the charge was filed. *See* NLRB Casehandling Manual § 11731. However, if a

charge alleges conduct which not only interferes with employee free choice, but also alleges conduct which is inherently inconsistent with the petition itself, the charge should block consideration of the petition and may even provide justification for dismissal of the petition. *See* NLRB Casehandling Manual § 11730.3.

Although an election was not ordered in this case, the unfair labor practice charge alleges conduct that interferes with employee free choice and thus has bearing on the NLRB's determination of who the exclusive collective bargaining representative should be for the drivers, monitors, and dispatchers at the Old Frankstown Road facility. Specifically, the charge alleges that First Student bargained in bad-faith by signing identical recognition clauses with Local 1729 and Local 205. (Joint Ex. 1J). The charge also alleges that First Student interfered with employee free choice by requiring members of Local 1729 to join Local 205 in order to remain employed at the Old Frankstown Terminal beyond the 2013-2014 school year. (Joint Ex. 1J). By forcing members of Local 1729 to join Local 205 and signing identical recognition clauses with both unions, First Student sent a loud and clear message to its collectively bargained employees that their employment would be at-risk unless they joined the company's preferred union—Local 205. As no exceptions to the Blocking Charge Doctrine are applicable in this scenario, the Board should reverse the Regional Director's decision and decline to render a decision on the employer's petitions until the unfair labor practice charge is investigated and resolved.

First Student's conduct is also inconsistent with its petitions because the purported question concerning representation and need for unit clarification arose as a direct result of First Student's bad-faith bargaining. In essence, First Student's improper conduct was the sole reason for the circumstances that the Regional Director relied upon to conclude that Local 205—the union preferred by management—should represent the drivers and monitors at the Old

Frankstown Road facility. In the absence of First Student's improper conduct as alleged in the unfair labor practice charge, there would be no question at all as to Local 1729's status as the exclusive collective bargaining representative of all drivers, monitors, and dispatchers at the Old Frankstown Road facility. As such, the Board should grant the Request for Review because the Regional Director's ruling on the blocking charge issue resulted in prejudicial error to the rights of Local 1729.

IV. Conclusion

For the foregoing reasons, Local 1729 respectfully requests that the Board grant its Request for Review of the Regional Director's decision, permit the parties to brief the issues raised herein, and ultimately issue an order reversing the decision of the Regional Director and finding that Local 1729 continues to be the exclusive collective bargaining representative for all drivers, monitors, and dispatchers at the Old Frankstown Road facility.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S DECISION** was served upon counsel for all parties 9th day of October, 2015, by e-mail and US mail, addressed as follows:

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